

Message Text

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ACTION EA-14

INFO OCT-01 ADP-00 L-03 SCI-06 AEC-11 EB-11 COME-00 NAS-01

OMB-01 TRSE-00 SIL-01 LAB-06 PM-09 CIAE-00 INR-10

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R 120955 Z APR 73

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 3077

C O N F I D E N T I A L TOKYO 4479

DEPARTMENT PASS AEC AND NATIONAL ACADEMY OF SCIENCES

E. O. 11652: GDS

TAGS: TECH, TRIO, PFOR, JA

SUBJ: STATUS OF ABCC AND TAX STATUS OF ABCC EMPLOYEES

REFS: (A) TOKYO A-35 OF JANUARY 30, 1973 (B) TOKYO 3459

(C) STATE 57588 (D) TOKYO 3981

SUMMARY: GOJ HAS EXPRESSED CONCERN THAT INCOME TAX STATUS OF ABCC EMPLOYEES RAISES SOME DOUBT AS TO WHETHER USG ACTUALLY CONSIDERS ABCC TO BE USG AGENCY, AS STATED IN EXCHANGE OF NOTES BETWEEN EMBASSY AND FONOFF ON APRIL 2. IN THIS CONNECTION, GOJ HAS ASKED WHETHER OR NOT USG CONSIDERS ABCC TO BE USG AGENCY UNDER SECTION 911 OF INTERNAL REVENUE CODE. FONOFF INDICATES IT PREFERS THAT ABCC HAVE STATUS OF USG AGENCY BUT TAX STATUS OF ABCC EMPLOYEES MUST BE CONSISTENT WITH THIS STATUS. ACTION REQUESTED: DEPARTMENT INSTRUCTIONS AS TO HOW EMBASSY SHOULD REPLY TO GOJ INQUIRIES. END SUMMARY

1. DURING PROCESS OF MAKING ADMINISTRATIVE ADJUSTMENTS FLOWING FROM CHANGE IN LEGAL STATUS OF ABCC (REFTELS), FINANCE MINISTRY UNCOVERED SOME APPARENT CONTRADICTIONS WHICH IT HAS ASKED EMBASSY TO RESOLVE. IN GOING THROUGH FILES, FINANCE MINISTRY DISCOVERED RECORD OF DISCUSSIONS WHICH TOOK PLACE IN OCTOBER 1952 IN TOKYO BETWEEN US AND JAPANESE REPRESENTATIVES WHO WERE NEGOTIATING DOUBLE TAXATION AGREEMENT. AT THAT
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TIME, ACCORDING TO FINANCE MINISTRY RECORD, JAPANESE SIDE INQUIRED IF ABCC IS USG AGENCY AND IF SO WHETHER USG WOULD REQUIRE ABCC EMPLOYEES TO PAY INCOME TAXES. AMERICAN SIDE ALLEGEDLY REPLIED THAT ABCC IS NOT RPT NOT USG AGENCY AND THEREFORE USG WOULD NOT BE ABLE TO TAX SALARIES OF ABCC EMPLOYEES IN JAPAN. AS DEPARTMENT WILL RECOGNIZE, THIS EXCHANGE EXPRESSES POINT OF VIEW DIRECTLY CONTRARY TO WHAT BOTH US AND GOJ HAVE BEEN ASSUMING THROUGHOUT HISTROY OF ABCC. BOTH ORIGINAL EXCHANGE OF NOTES (OCTOBER 22-23, 1952) BETWEEN FONOFF AND EMBASSY ON STATUS OF ABCC, AS WELL AS MORE RECENT EXCHANGE (APRIL 2, 1973) ON SAME SUBJECT (TEXTS CONTAINED REF D), SPECIFIED THAT ABCC IS USG AGENCY. SUCH STATUS HAS SEVERAL IMPORTANT CONSEQUENCES, INCLUDING ACCESS OF ABCC AND ITS AMERICAN EMPLOYEES TO USG LOGISTIC SUPPORT (APO, MILITARY COMMISSARIES, ETC.) AND EXEMPTION OF AMERICAN EMPLOYEES FROM PAYMENT OF JAPANESE INCOME TAX. ON LATTER POINT, GOJ CLAIMS NO AMERICAN EMPLOYEE OF ABCC HAS EVER PAID JAPANESE INCOME TAX. MOREOVER, ABCC INFORMS US THAT US FEDERAL INCOME TAX IS WITHHELD AT SOURCE BY NATIONAL ACADEMY OF SCIENCES OR US PUBLIC HEALTH SERVICE (DEPENDING ON SPECIFIC ABCC EMPLOYEE) AND PAID TO IRS.

2. DESPITE ASSERTION CONTAINED IN EXCHANGE OF NOTES, ABCC AND ITS AMERICAN EMPLOYEES HAVE OVER SEVERAL YEARS FUNCTIONED IN WAYS CHARACTERISTIC OF PRIVATE RATHER THAN GOVERNMENTAL INSTITUTION (REF A, PAGE 3) . ONE SUCH WAY CONCERNS PERSONAL INCOME TAX STATUS. THERE APPEARS TO BE NO QUESTION IN CASE OF US PUBLIC HEALTH SERVICE PHYSICIANS ASSIGNED TO ABCC WHO PAY US TAX ON FULL SALARIES. HOWEVER, SOME OTHER AMERICAN EMPLOYEE (INCLUDING PHYSICIANS AND SCIENTISTS) HAVE CLAIMED STATUS OF FOREIGN RESIDENTS IN FILING US INCOME TAX RETURNS, AND IN PAST HAVE RECEIVED REFUND OF TAXES WITHHELD AT SOURCE.

3. IN EFFORT TO CLARIFY FACTS OF SITUATION, EMBOFF CONTACTED IRS REP TOKYO WHO STATED THAT THIS QUESTION HAD ALREADY BEEN UNDER EXAMINATION IN TOKYO OFFICE IN CONNECTION WITH 1970 TAX RETURNS OF FORMER ABCC EMPLOYEE. ON EMPLOYEE' S DEPARTURE FROM JAPAN, IRS OFFICE TOKYO TRANSFERRED CASE TO WASHINGTON AND THEREFORE DOES NOT KNOW WHETHER FINAL DECISION ON TAX STATUS HAS YET BEEN MADE. HOWEVER, TOKYO IRS OFFICE, IN TRANSFERRING RECORDS, EXPRESSED OPINION THAT ABCC EMPLOYEE DID NOT HAVE GROUNDS FOR CLAIMING BONAFIDE RESIDENCE IN FOREIGN COUNTRY (BECAUSE HE HAD NOT PAID TAXES TO HOST GOVERNMENT) AND CONFIDENTIAL

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THEREFORE COULD NOT CLAIM EXEMPTION FROM PAYMENT OF US TAX ON INCOME RECEIVED FROM EMPLOYMENT BY ABCC. (IRS TOKYO TELLS US THAT DIRECTOR, INTERNATIONAL OPERATIONS, IRS, WASHINGTON, HAS JURISDICTION IN THIS MATTER.)

4. EMBASSY IS, OF COURSE, NOT CONCERNED WITH INDIVIDUAL CASES. HOWEVER, GOJ HAS RAISED QUESTION OF WHETHER USG CONSIDERS ABCC TO BE USG AGENCY UNDER TERMS OF SECTION 911 OF INTERNAL REVENUE CODE, IN WHICH CASE GOJ WOULD ALSO ASSUME THAT ALL AMERICAN EMPLOYEES OF ABCC ARE PAYING US INCOME TAX. FONOFF HAS STRESSED THAT IT PREFERS ABCC TO HAVE LEGAL STATUS OF USG AGENCY, AS ESTABLISHED IN EXCHANGE OF NOTES, BUT WOULD HAVE DIFFICULTY DEFENDING THIS POSITION WITHIN GOJ IF SOME AMERICAN EMPLOYEES OF ABCC ARE BEING EXEMPTED FROM PAYMENT OF US INCOME TAX ON GROUNDS THAT THEY ARE RESIDENTS OF AND THEIR INCOME IS EARNED IN JAPAN.

5. EMBASSY AGREES THAT PRESERVATION OF USG AGENCY STATUS IS HIGHLY DESIRABLE, PARTICULARLY AS IT CONSTITUTES LEGAL BASIS ON WHICH US FORCES JAPAN PROVIDE LOGISTIC SUPPORT, IMPORTANCE OF WHICH DEPARTMENT HAS RECOGNIZED (REF C, PARAS 4-5). MOREOVER, THIS CONTENTION IS CONSISTENT WITH POSITION WE HAVE ALWAYS TAKEN (FINANCE MINISTRY 1952 RECORDS NOTWITHSTANDING) AND AS CONFIRMED IN RECENT EXCHANGE OF NOTES. THEREFORE, WE WOULD HOPE TO RECEIVE DEPARTMENT' S AUTHORIZATION TO INFORM GOJ THAT USG CONFIRMS ABCC AS USG AGENCY, INCLUDING UNDER SECTION 911 OF INTERNAL REVENUE CODE. WE WOULD WISH TO ASSERT FURTHER THAT INCOME TAX STATUS OF US CITIZENS IS INTERNAL US MATTER BUT WE COULD ASSURE GOJ THAT ALL CASES ARE HANDLED ACCORDING TO US LAW.

6. ACTION REQUESTED: INSTRUCTIONS FOR RESPONSE TO GOJ INQUIRES.
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*** Current Classification *** CONFIDENTIAL

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